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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,976	06/27/2001	Charles L. Urso		3786

7590 09/16/2004
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Waltham, MA 02454-1136

EXAMINER

DEANE JR, WILLIAM J

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,976

Applicant(s)

URSO, CHARLES L.

Examiner

William J Deane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 21 – 25, 28 - 38 rejected under 35 U.S.C. 102(b) as being anticipated by WO 95/18490 (Jackson).

With respect to claim 21 - 22, 25, 32 – 33 - 38 Jackson teaches a communication device 10 comprising a cap 12, a soft crown 26, a stiff rib 110 and a wireless telephone (see page 6, line 17). The Examiner considers the shielding 110 as the rib (see page 6, lines 19 – 21). With respect to the phone, note page 6, lines 14 –17. Here, Jackson says the communication device is suitable for incorporation into a cap and that he device may be a cellular telephone. In addition, note that the device of Jackson is a computer (see page 2, lines 27 – 30). Note that the computer components, in particularly elements 92 and 94, are supported by shielding 110. Since Jackson teaches a computer and since Voice over the Internet is well know (VoIP); the Examiner again could argue that the phone is with in the cap and supported by the rib 110. Though the controls for the phone could be on the wrist (Fig. 7) it need not be. Note that controls (72 &74) of the computer are located on the visor 24.

With respect to claims 23, and 31 note elements 50 and 52.

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With respect to claims 24, and 29 - 30, as claimed elements 62 and 64 read on applicant's claims.

With respect to claim 28, note Fig. 2, element 94.

With respect to claim 28, note the rejections above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 – 27 and 39 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson. In addition, claims 24 and 29 - 30 are also further rejected under 103 as being unpatentable over Jackson.

With respect to claims 26 – 27 and 39 - 40, Jackson teaches everything except for the particulars of the antenna. However, Jackson does teach an antenna and teaches that the antenna is flexible (note element 114). Therefore, Jackson teaches the claimed device except for placing the antenna on the visor. However, it would have been obvious to one of ordinary skill in the art to place the antenna wherever it was deemed necessary.

With respect to claims 24, and 29 - 30, retracting and slidably and pivotable earpieces are so well known in the art that no art need be supplied. Most headgear today have these well known adjustable earpieces. It would have been obvious to one


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of ordinary skill in the art to have included such well know adjustable headpieces to the Jackson device in order to have a more comfortable hat.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bill Deane whose telephone number is (703) 306-5838. In addition, facsimile transmissions should be directed to Bill Deane at facsimile number (703) 872-9306.

05Sep04


WILLIAM J. DEANE, JR.
PRIMARY EXAMINER